


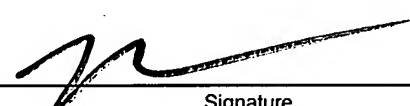
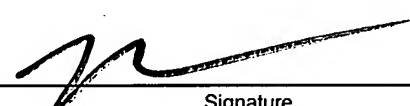
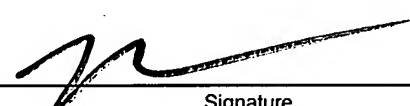


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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) HOBNP001												
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>June 23, 2010</u></p> <p>Signature <u></u></p> <p>Typed or printed name <u>Veronica Pula</u></p>		Application Number <u>10/824,273</u>	Filed <u>April 14, 2004</u>											
		First Named Inventor <u>Aron B. Hall</u>												
		Art Unit <u>2438</u>	Examiner <u>Thanhnga B. Truong</u>											
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td></td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td>Signature <u>Robyn Wagner</u></td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>50,575</u></td><td>Typed or printed name <u>408-973-2596</u></td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td>Telephone number <u>June 23, 2010</u></td></tr><tr><td></td><td>Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <table border="1"><tr><td><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</td></tr></table>				<input type="checkbox"/> applicant/inventor.		<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Signature <u>Robyn Wagner</u>	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>50,575</u>	Typed or printed name <u>408-973-2596</u>	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	Telephone number <u>June 23, 2010</u>		Date	<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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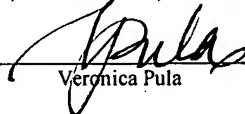
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Aron B. Hall	Examiner:	Thanhnga B. Truong
Application No.:	10/824,273	Art Unit:	2438
Filed:	April 14, 2004	Docket No.:	HOBNP001
Title:	NETWORK SECURITY APPARATUS AND METHOD		

CERTIFICATE OF MAILING

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6/23, 2010.

  
Veronica Pula

**REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Final Office Action mailed December 23, 2009. The following remarks are respectfully submitted in support of Applicants' pre-appeal brief request for review filed herewith.

Claims 1-25 and 29-31 are pending. Claims 26-28 have been cancelled. The claimed subject matter of independent Claims 1, 10, 16, and 22 relate to a system, method, apparatus, and computer program product (respectively) which determine "one or more quantities of damages avoided by one or more blocked attacks" and calculate "security consumption during a period of time."

Paragraph [0017] of the Specification describes a network security system that includes a billing server. The billing server is "configured to calculate the security protection consumed by calculating damages avoided from attacks that were blocked." Paragraph [0020] provides an example of the system being used to charge a "business with a highly efficient Information Technology (IT) staff that aggressively eliminates exploitable vulnerabilities on the network" less "than a network that is more vulnerable to attacks." Paragraph [0023] explains that "customers who maintain low-risk computer networks" are rewarded and an incentive is provided "for customers that spread viruses, worms, and other attacks to improve the security of their network." An example "security bill" is shown in Figure 3.

**Claim Rejections under 35 U.S.C. §112, first paragraph**

Claims 29-31 were rejected by the Examiner under 35 U.S.C. §112, first paragraph. Support for the claims was provided on Page 9 of Applicants' Amendment D, which is repeated here:

“Support for new dependent Claim 29 may be found, without limitation in paragraph [0039] of the Specification.

Support for new dependent Claim 30 may be found, without limitation in paragraphs [0038]-[0039] of the Specification.

Support for new dependant Claim 31 may be found, without limitation, in Figure 3 of the Specification (e.g., “Sendmail: 15” and “Worm: 3”).”

Applicants respectfully request that the rejection of Claims 29-31 under 35 U.S.C. §112, first paragraph, be withdrawn accordingly.

**Claim Rejections under 35 U.S.C. §112, second paragraph**

Claims 16-21 were rejected by the Examiner under 35 U.S.C. §112, second paragraph. As explained on Page 6 of Applicants' Amendment D, examples of corresponding structure may be found, without limitation, in Figure 1, and paragraphs [0027]-[0030] of the Specification. Applicants respectfully request that the rejection of Claims 16-21 under 35 U.S.C. §112, second paragraph, be withdrawn accordingly.

**Claim Rejections under 35 U.S.C. §101**

Independent Claims 22, 10, and 16 were rejected by the Examiner under 35 U.S.C. §101. Regarding Claim 22, on Page 2 of the Office Action, the Examiner states:

“As mentioned in the previous office action, although claim 22 has “storage” language, it does not prove to be statutory, since this term “computer-readable storage medium” does not support anywhere in the specification, which could construe as new matter. Therefore, claim 22 is still found non-statutory. In addition, the specification still recites a propagated signal (see paragraph [0012] of page 4 of specification), wherein the computer program product could embodied and transferred via a propagated signal. Therefore, the 101 rejection is still maintained.”

As explained on Page 6 of Applicants' Amendment D, support for a computer-readable storage medium may be found, without limitation in Paragraph [0028] of the Specification, which states that a storage input device 170 “such as a floppy disk drive or CD-ROM drive” accepts “computer program products” such as “a floppy disk or CD-ROM or other nonvolatile storage media that may be used to transport computer instructions.” Further, while a propagated signal is

mentioned in the Specification, a propagated signal is not a “computer-readable storage medium” and is thus not claimed by Claim 22.

As a computer-readable storage medium is statutory subject matter under MPEP 2106.01 [R6] and in light of *In re Beauregard*, 53 F.3d 1583; 35 USPQ.2d 1383 (Fed. Cir. 1995), Applicants respectfully request that the rejection of Claim 22 under 35 U.S.C. §101 be withdrawn accordingly.

Regarding Claims 10 and 16, on Page 7 of the Office Action, the Examiner states:

“b. Referring to claim 10:

i. This claim has limitations that is similar to those of claim 22, thus it is rejected with the same rationale applied against claim 22 above.

...

c. Referring to claim 16:

i. This claim has limitations that is similar to those of claim 22, thus it is rejected with the same rationale applied against claim 22 above.”

Unlike Claim 22, which recites a computer program product, Claim 10 recites a method. As Claims 22 and Claims 10 recite two different types of statutory subject matter, Applicants disagree that the “same rationale” could serve as a basis of rejection under 35 U.S.C. §101.

Also unlike Claim 22, Claims 16 recites an apparatus. And, again, Applicants are unable to determine how the “same rationale” could apply as a basis of rejection under 35 U.S.C. §101.

Applicants respectfully request that the rejection of Claims 10, 16, and 22 under 35 U.S.C. §101 and the rejections of their respective dependent claims be withdrawn accordingly.

#### **Claim Rejections under 35 U.S.C. §102(e)**

Claims 1-25 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by Liang (U.S. Patent No. 7,062,553).

Applicants maintain, per the Remarks of Amendments C and D, that Liang does not disclose determining “one or more quantities of damages avoided by one or more blocked attacks.”

On Page 8 of the Office Action, the Examiner states that the above limitation may be found in Liang at Figure 4, element 1402; at Figure 5, element 1502; at 2:66-3:19; and at 7:66-8:4. Each portion of Liang will be addressed in turn.

Figure 4 element 1402 of Liang is a block in a flow chart that states “Determine a neighborhood of a device node having unpredicted traffic flow.” In contrast, the independent claims of the present application state “determin[ing] one or more quantities of damages avoided by one or more blocked attacks.” While both element 1402 of Liang and the recited limitation superficially share a “determining” step, **what** is being determined is very different.

Figure 5 element 1502 of Liang is a block in a flow chart that states “Determine first modified sections of the modified file.” As with element 1402 of Liang, while element 1502 of Liang and the recited “determining one or more quantities of damages avoided by one or more blocked attacks” both include a “determining” step, **what** is being determined is very different.

Liang at 2:66-3:19 states:

“A further embodiment according to the invention for finding a virus is by searching the modification sections in files of the network system. Initially, the system finds a modified file in a predetermined time interval. The system then determines a first plurality of modified sections of the modified file. The system finds a second modified file in the predetermined time interval. Next, the system determines a second plurality of modified sections in the second file. The system compares the first modified file against the second modified file. The process is repeated for other files being modified in the predetermined time period. The management server receives info on the conditions of the virus infection. If no virus is found, i.e., all the modified sections from different modified files are not identical nor similar, then the process comes to the end. Otherwise, the management server is informed that there is possibly attack a virus is when modified sections from different modified files are identical or similar. The system accordingly quarantine an area containing device nodes having files with the modified sections. Finally, the system transfers an antivirus task into said the quarantine area for finding and eradicating the virus.”

Applicants are unable to locate in the quoted portion of Liang any mention of a determination of “one or more quantities of damages avoided by one or more blocked attacks” as recited in independent Claims 1, 10, 16, and 22. Instead, that portion of Liang appears to recite a process for determining whether a virus is present by examining modified files.

Liang at 7:66-8:4 states:

“The damage control task leader (DCTL) deploys the virus-cleaning and blocking tasks to the device nodes selected by the management server 108. The damage control task leader (DCTL) then follows up on the execution and then reports back upon completion of the execution.”

Applicants are also unable to locate in that portion of Liang any mention of avoided damages being quantified as recited in independent Claims 1, 10, 16, and 22. Instead, that portion of Liang appears to describe a damage control task leader facilitating the execution of a virus removal.

Applicants respectfully submit that the Examiner has not made a prima facie rejection of Claims 1-25 under 35 U.S.C. §102(e), and ask that the rejection be withdrawn accordingly. Further, as the Examiner has not provided a rejection of Claims 29-31 under 35 U.S.C. §102(e), and as Claims 29-31 depend from Claim 1, Applicants respectfully submit that Claims 29-31 are allowable over Liang.

**Claim Rejections under 35 U.S.C. §103(a)**

On Page 10 of the Office Action, the Examiner states that Claims 1-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Liang (U.S. Patent No. 7,062,553), in further view of Colson (U.S. 2003/0128229). Based on subsequent paragraphs of the Office Action, it appears that the Examiner instead meant to state a combination of Liang and Gupta (U.S. Patent No. 7,234,168).

Regarding the element of "determin[ing] one or more quantities of damages avoided by one or more blocked attacks," the Examiner repeats the portions of Liang discussed above, and does not provide any citations to Gupta.

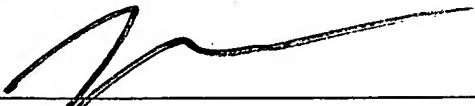
Accordingly, for the reasons described in conjunction with the rejection of claims under 35 U.S.C. §102(e), Applicants also respectfully submit that the Examiner has not made a prima facie rejection of Claims 1-9 under 35 U.S.C. §103(a). Applicants respectfully submit that Claims 1-9 are allowable over Liang in view of Gupta and request that the rejection under 35 U.S.C. §103(a) be withdrawn.

Reconsideration of the application and allowance of all claims are respectfully requested based on the preceding remarks.

Respectfully submitted,

Dated: \_\_\_\_\_

6/23/2010

  
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Robyn Wagner  
Registration No. 50,575  
V 408-973-2596  
F 408-973-2595

VAN PELT, YI & JAMES LLP  
10050 N. Foothill Blvd., Suite 200  
Cupertino, CA 95014